NOTES OF CASES.

Attorney and Client—Contract for Compensation During Existence of Relation.—In Stern and Swift *v.* Hyman Bros., 109 S. E. 79 the Supreme Court of North Carolina held that a contract for compensation made by attorney and client during the existence of the relation is void, as against public policy; and unless a contract for amount of compensation was made before entering into the relation, the amount is to be assessed on the basis of a reasonable compensation for the services rendered and the benefits received.

The court said in part: "While the relationship exists, an attorney cannot bind his client in any manner to make him greater compensation for his services than he would have the right to demand if no contract had been made during the existence of the relationship. Weeks on Attornies (2d Ed.), § 368; Elmore *v.* Johnson, 143 Ill. 513, 32 N. E. 413, 21 L. R. A. 366, 36 Am. St. Rep. 401. His honor disregarded this principle as pointed out by exceptions 5, 7, 9 and 16 in the record. In a contract of this kind, the burden is on the plaintiff to show that it was fair and reasonable and not upon the defendant to show to the contrary. Lee *v.* Pearce, 68 N. C. 81, 87; McLeod *v.* Bullard, 84 N. C. 516; Pritchard *v.* Smith, 160 N. C. 84, 75 S. E. 803; 2 R. C. L. p. 966, § 42, page 1038; Shirk *v.* Neible, 156 Ind. 66, 59 N. E. 281, 83 Am. St. Rep. 161, 162, and note.

"According to the complaint and the testimony of the plaintiff, Stern himself, the contract he sets up was entered into after the establishment of the relation of attorney and client between the parties and during the continuance of this relationship. Under such circumstances, the client would be at a serious disadvantage if the attorney should throw up the case after acquiring knowledge of his plaintiff's case, and while the conduct of the case was in medias res. The parties did not stand upon an equal footing. 2 Thornton on Attornies, §§ 428, 432. This wholesome principle is that the parties to a contract must stand on an equal footing, and that therefore, as a matter of law, 'certain known and definite fiduciary relations, that, for instance, of trustee and cestui que trust, attorney and client, guardian and ward, and general agent, having the entire management of the business of the principal, are sufficient under our present judiciary system to raise a presumption of fraud as a matter of law, to be laid down by the judge as decisive of the issue, unless rebutted. Other presumptions of fraud are matters of fact to be passed upon by a jury.' Lee *v.* Pearce, 68 N. C. 76. The able opinion in this case by Chief Justice Pearson laid down the eternal principle of equity and fair dealing from which this court has never deviated. On page 87 of 68 N. C., in that opinion the court instances other fiduciary relations which do not amount to a presumption of fraud as a matter of law, but merely raise a presumption of fraud as a matter of fact to be passed upon by a jury.

"That case has been cited and affirmed by this court in a long line of cases cited in the Anno. Ed., and the principle is universally recognized. The fact of the existence of the relationship of attorney and client at the time the contract is alleged by the plaintiff to have been made appears from the complaint, and by the evidence of the plaintiff himself, Stern, and the judge should have held the alleged contract, if made, to have been void, as a matter of law. And unless the jury rejected, as it would seem that they did, the defendant's allegation that there was a contract made prior to entering into the relationship for $200, then the case should have been submitted to the jury upon the third prayer of the defendants as above set out, and the jury should have assessed the plaintiff's recovery upon the basis of a reasonable compensation for the services rendered by the plaintiffs and the benefits received by the defendants."

Evidence—Admissibility of Evidence Secured by Unlawful Search.—In Dukes *v.* United States, 275 Fed. 142, the U. S. Circuit Court of Appeals for the Fourth Circuit held that where a sheriff and his deputy, without a warrant of arrest or search warrant, entered defendant's house through an open door, and seized whisky which was on a table by which defendant was standing, the fact that defendant did not object, or that he then said they might look around, which they did, finding more in another building, did not make the search or seizure lawful, nor render the evidence so procured admissible against defendant in a criminal prosecution.

The court said in part: "It is argued that the defendant made no objection to the entry of the witnesses, either upon his premises or into his dwelling, and therefore that it was a peaceful entry, and that the rule excluding testimony against a person accused of crime on his trial, such testimony having been obtained by search without warrant, does not apply. We do not agree to this proposition. These two witnesses, one the sheriff of the county in which the defendant lived, and the other his deputy, crossed the defendant's threshold and invaded his castle without warrant of law. There is no suggestion that objection on the part of the defendant, to either the entry of these officers into his dwelling or the seizure by them of his property, would have caused them to desist. On the other hand, it is more than likely that any protest or show of resistance on the part of the defendant would have led to more aggressive action on the part of the officers.

"In Gouled *v.* United States, 254 U. S. ——, 41 Sup. Ct. 261, 65 L. Ed. ——, in which the opinion was rendered by the Supreme Court of the United States on the 28th of February, 1921, this question of unreasonable searches and seizures is fully discussed. Gouled and another were indicted for a conspiracy to defraud the United States in one count, and in another for the use of the mails to promote a scheme